

NORTH CAROLINA INDUSTRIAL COMMISSION

**I.C. No. 16-005194, ANGELA ZIGLAR, Plaintiff, v. SHERIFF OF FORSYTH COUNTY,
Defendant-Employer, FORSYTH COUNTY, Defendant-Alleged Employer, and PMA
COMPANIES, Defendant-ADMINISTRATOR**

FINAL COMPROMISE SETTLEMENT AGREEMENT

THIS COMPROMISE SETTLEMENT AGREEMENT, A FINAL SETTLEMENT AND RELEASE, was made and entered into on the 8th day of March 2018, by and between Plaintiff and Defendants.

On January 29, 2016, Plaintiff, who was then age 47 with date of birth of J was employed as a Pre-Trial Release Specialist for the Sheriff of Forsyth County, where she had worked for approximately 18 years. Plaintiff's approximate average weekly wage on January 29, 2016 was \$868.38, resulting in an estimated weekly compensation rate of \$578.92. On that date, Plaintiff alleges that she slipped and fell on ice in the County's parking lot.

Defendants contend that Forsyth County is not Plaintiff's employer. Defendants' contend the actual employer of Plaintiff is the Sherriff of Forsyth County.

Defendants initially paid medical benefits without prejudice pursuant to a Form 63, which was filed on February 11, 2016. Defendants eventually denied the entire claim via a Form 61, which was filed on February 6, 2018 and amended on February 15, 2018. As a result of the denial, Defendants have not paid any indemnity or medical benefits since February 11, 2016.

Plaintiff contends that she sustained a compensable injury on January 29, 2016 arising out of and in the course of her employment with Defendant-Employer and that she is therefore entitled to substantial benefits under the North Carolina Workers' Compensation Act, including, but not limited to, payment of medical bills, additional treatment for injuries to the left hip, back, left elbow, and left leg, and compensation for anticipated future permanent partial impairment ratings to any and all affected body parts.

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employee and fell on County property while coming into work, that her claim for workers' compensation benefits was reasonably denied, and that she is therefore not entitled to any benefits.

The parties have conferred together, Plaintiff being represented by Oxner + Permar, Attorneys of Greensboro, North Carolina, and Defendants being represented by Goldberg Segalla, L.L.P., Attorneys of Raleigh, North Carolina, and have decided that it is in the best interests of all concerned to enter into an agreement where all matters and things in controversy arising out of the alleged January 29, 2016 injury would be settled with the payment to Plaintiff of THIRTY ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$31,500.00), in one lump sum, without commutation, in settlement of all claims under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted. This sum represents the settlement of a disputed matter and not an admission of liability, and is in lieu of any disability or other workers' compensation benefits, including, but not limited to, those that might otherwise have been claimed for a change in condition or progression of any condition that might develop in the future, medical, death, or any other benefits, which are or may be due Plaintiff, her dependents, her estate, or any other representative of Plaintiff now or at any time in the future pursuant to the North Carolina Workers' Compensation Act. The parties and their respective counsel also stipulate and agree that this settlement is fair and just, that the interests of all parties and of any person or entity, including a health benefit plan, that

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paid any of the medical expenses of Plaintiff have been considered, and that there is a need for finality in this litigation.

Anticipating an attorney's fee of 25%, the balance of TWENTY-THREE THOUSAND SIX HUNDRED AND TWENTY-FIVE DOLLARS (\$23,625.00) as the balance of future compensation in payments pro-rated over Plaintiff's life expectancy of 30.2 years, based on Plaintiff's date of birth of -- according to the Mortality Tables Codified in N.C. Gen. Stat. §8-46. Plaintiff's life expectancy of 30.2 years equals 1,570.4 weeks and yields payments of \$15.04 per week.

The parties have considered Medicare's interests with regard to the settlement of the medical portion of this claim, as required under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), *et seq.*, and the current MSP regulations, codified at 42 C.F.R. § 411.20, *et seq.*

The parties have considered whether Medicare has made any payment, conditioned upon possible reimbursement, for medical services allegedly related to the January 29, 2016 injury, for which Defendants may be deemed responsible by Medicare as a primary payer. Plaintiff represents and stipulates that Medicare has not paid any medical bills whatsoever, whether associated with the January 29, 2016 injury or otherwise, because Plaintiff is not a Medicare beneficiary and is not Medicare eligible. Accordingly, the parties rely upon Plaintiff's representation that Medicare has not made any payment for medical care on behalf of Plaintiff and there is no possible Medicare conditional payment issue. Plaintiff agrees to hold Defendants harmless for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services

(CMS) and/or the Benefits Coordination & Recovery Center (BCRC) may pursue based upon any incorrect or inaccurate information provided by Plaintiff. Plaintiff further agrees that based upon the parties' consideration of Medicare's reimbursement rights in the negotiated terms of this settlement, there is no valid right to a private cause of action for damages because Defendants have not failed to provide for primary payment and/or appropriate reimbursement.

The parties have further agreed to resolve the portion of Plaintiff's claim involving future medical treatment. It is not the intention of the parties to this agreement that responsibility for future medical treatment related to the January 29, 2016 injury will be shifted from Defendants to Medicare or the federal government. The parties understand that in certain circumstances, a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) may be necessary to protect the interests of Medicare and/or Plaintiff as a current or future Medicare beneficiary in conjunction with the full and final settlement of a workers' compensation claim. The parties have considered and evaluated whether a WCMSA should be established in this case. Considerable attention has been given by all parties to Plaintiff's potential for future entitlement to such benefits and reasonable consideration of Medicare's interest.

Based upon the material and relevant medical records, the parties do not anticipate any further medical care will be necessary or recommended for the January 29, 2016 injury. Furthermore, a WCMSA would not be reviewed by CMS, even if voluntarily submitted, because the settlement does not meet the current workload review thresholds. Therefore, based upon the existing criteria and suggested guidelines

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presently in effect, the parties believe that a WCMSA is not necessary or required to protect Medicare's interests and no portion of this settlement should be apportioned to fund a WCMSA.

Defendants have agreed to pay all of the known, authorized, and related medical expenses incurred by Plaintiff for the alleged January 29, 2016 injury through the date of this agreement. Plaintiff certifies that she has not had any disputed medical treatment related to the alleged work injury. Therefore, pursuant to the terms of N.C.G.S. § 97-17(b), no attachment documenting these expenses is necessary. The parties further stipulate and agree that the positions of all parties to this agreement are reasonable as to the payment of medical expenses.

Plaintiff certifies that any and all known or potential liens involving Medicare, Medicaid, the Internal Revenue Service, Child Support Enforcement, or other agencies of federal, state, or local government have been revealed to Defendants, and Plaintiff agrees to hold harmless Defendants regarding any such liens, should they exist. The parties acknowledge that the certification made by Plaintiff and contained in this paragraph is a material representation relied upon by Defendants in entering into this agreement.

Plaintiff has agreed to settle her case for less than the full amount of reasonably anticipated future benefits for a variety of reasons. Settlement will provide for a known amount of recovery, eliminating uncertainty as to the future, such as the possibility that Plaintiff will die in an accident or from an unrelated health problem. Further, Plaintiff will derive emotional benefit from the elimination of the workers' compensation system from

her life and from the increased control she will have over her medical treatment and other aspects of her life.

Plaintiff represents to the North Carolina Industrial Commission that by execution of this agreement, she knowingly and intentionally waives her right to further benefits under the North Carolina Workers' Compensation Act, but it is agreed that no rights other than those arising under that Act are compromised or released by this agreement.

The parties acknowledge that any opinions stated by physicians or other medical providers regarding the nature and extent of Plaintiff's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Plaintiff further acknowledges that her condition may be progressive and that recovery is uncertain and indefinite. Accordingly, Plaintiff and Defendants agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians or other medical providers regarding the diagnosis or prognosis of any injury, whether now known or unknown, resulting from the alleged January 29, 2016 injury.

Plaintiff certifies that in making this agreement, she was not influenced by any representations or statements regarding her condition, the nature of her injuries, or any other matters concerning her claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of Defendants, that the facts in connection with her employment and with her resulting injuries and impaired physical condition, if any, are fully known, understood, and

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comprehended by Plaintiff, and that her rights under the Workers' Compensation Act are thoroughly and completely understood by her.

In consideration of the compensation payments recited, and the medical benefits that shall be paid upon approval of the North Carolina Industrial Commission, Plaintiff has and does release and forever discharge not only for herself but also for her heirs, next of kin, and/or personal representative(s), Defendants of and from any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims, which against Defendants, she ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the alleged January 29, 2016 injury, which give rise to this claim for compensation and for any subsequent disability sustained by her, or medical bills incurred by her.

Plaintiff expressly agrees that any and all rights that she may have or that may arise as a result of any change of condition under and by virtue of the provisions of Chapter 97 of the North Carolina General Statutes, giving her the right to reopen this claim for compensation or medical benefits at any time within two years from the date of the last payment of compensation under an Award by the North Carolina Industrial Commission are waived, and Defendants are expressly and particularly released from any and all further liability to her by reason of any right or claim Plaintiff, Plaintiff's heirs, next of kin, and/or personal representative(s) may have, or which may arise, to reopen this action and claim further benefits, whether compensation, medical, or otherwise.

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All parties to this agreement specifically stipulate that the North Carolina Industrial Commission may consider the matters now before it in passing on this compromise agreement, subject to the conditions previously stated. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission by its award duly issued, and the same shall be binding upon all parties when approved by said Commission. All parties further agree that, in the event the North Carolina Industrial Commission does not approve this agreement, nothing contained here shall be construed as an admission of liability in any future proceedings before the North Carolina Industrial Commission or any other tribunal.

It is further understood that the rights and remedies of Plaintiff against Defendants as a result of Plaintiff's employment and her alleged January 29, 2016 injury are governed and controlled by the North Carolina Workers' Compensation Act, and that all of such rights are being compromised, adjusted, and forever resolved.

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By the signatures below, Plaintiff and Defendants accept the terms of the settlement described here.

Angela Ziglar
ANGELA ZIGLAR, Plaintiff

Consented To:

Kathy Stewart
Kathy Stewart, Attorney for Plaintiff
North Carolina State Bar No. 48400

NORTH CAROLINA
Davidson COUNTY

Personally appeared before me this 21 day of March, 2018, ANGELA ZIGLAR, who, being first duly sworn, acknowledged the execution of the foregoing agreement for the purposes and considerations therein expressed.

My Commission expires:

1/5/22

Shana Coe
NOTARY PUBLIC
Davidson County, NC

[Signature]
Notary Public

SHERIFF OF FORSYTH COUNTY,
Defendant-Employer

BY:

[Signature]
Greg Horner, Attorney
North Carolina State Bar No. 35346

FORSYTH COUNTY,
Defendant-Employer

BY:

[Signature]
Greg Horner, Attorney
North Carolina State Bar No. 35346

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PMA COMPANIES,
Defendant-Administrator

BY:



Greg Horner, Attorney
North Carolina State Bar No. 35346

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